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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

ORIGINAL
FILE

July 28, 1992

FEDERAL EXPRESS/BY HAND

Donna Searcy, Secretary
Federal Communications Commission
1919 M Street NW Room 222
Washington, D.C. 20554

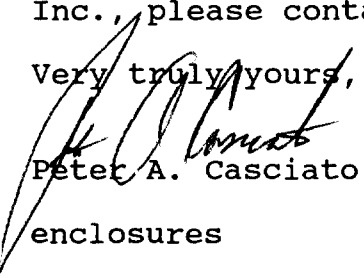
Re: Healdsburg, CA MM Docket No. 92-111 ✓

Dear Ms. Searcy:

✓ Enclosed for filing in the above-captioned proceeding are an original and six copies of Healdsburg Broadcasting, Inc.'s (a) Petition For Leave to File Consolidated Reply and (b) Consolidated Reply.

Should you have any questions concerning Healdsburg Broadcasting, Inc., please contact the undersigned.

Very truly yours,


Peter A. Casciato

enclosures

cc: Michael & Julia Akana
w/encls.

PAC:sc

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BEFORE THE FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In re Applications of)	MM Docket No. 92-111
Deas Communications, Inc.,)	
<u>et al.</u>)	File Nos. BPH-910208MB
)	<u>et al.</u>
For A Construction Permit)	
For A New FM Station on)	
Channel 240A)	
Healdsburg, California)	

To: Hon. Edward J. Kuhlmann,
Administrative Law Judge

PETITION FOR LEAVE TO FILE CONSOLIDATED REPLY

Healdsburg Broadcasting, Inc. ("HBI"), by its attorney and pursuant to Commission rules 1.45, 1.29 and 1.294, hereby requests leave to file a Consolidated Reply to the Mass Media Bureau's ("Bureau") July 20, 1992 Consolidated Opposition to HBI's Response to Order to Show Cause ("Show Cause Response") and HBI's Petition for Leave to File Corrected Amendment ("Petition") and Deas Communications Inc.'s ("Deas") July 22, 1992 Opposition to HBI's Petition, respectively.¹

As discussed in HBI's concurrently filed Reply, the Bureau's Opposition miscites or misinterprets Atlantic Broadcasting Co., 5 FCC 2d 717, 8 RR2d 991 (1966) for the proposition that the presiding judge does not have the authority to accept HBI's corrected amendment or rule favorably on its Show Cause Response. Atlantic pertains only to limits on a presiding judge's discretion on matters ruled

¹ In footnote 2 (p. 2) to its July 15, 1992 Response to Order to Show Cause, HBI reserved the right to Reply to any filed Oppositions. However, out of an abundance of caution and to comport with any procedural requirements, it is filing this request to Reply with the presiding judge.

on by the Commission and not on matters considered by another delegated authority, in this case, the Assistant Chief of the Audio Services Division of the Bureau.² Radio Gaithersburg, Inc., 41 RR2d 711, 713 fn. 1 (ALJ 1977). Thus the presiding judge's determination under his Show Cause Order, as well as his consideration of HBI's Petition, is de novo review of the facts and circumstances contained therein. Even if the Bureau were correct that Atlantic applied herein, the presiding judge could review and determine the merits of HBI's claims in response to new facts or circumstances, as set forth in HBI's Petition and Show Cause Response. Atlantic Broadcasting Co., supra, 8 RR2d at 995-996. And "the failure to allege previously unknown facts would not, in itself, be a sufficient reason for the subordinate officials to deny such interlocutory requests." Ibid. at 996.

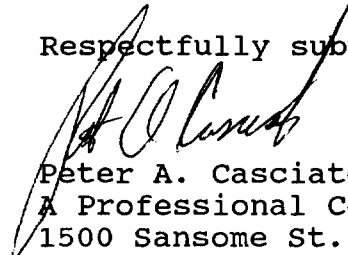
Likewise, Deas has misstated factual matters and legal conclusions concerning HBI's Amendment and mischaracterized HBI's good cause showing in its Show Cause Response and Petition, warranting HBI's Reply to set the record straight. Finally, because the ultimate sanction, dismissal, would be visited on HBI, if the position of the Bureau or Deas prevails, the accompanying response should be accepted for independent public interest reasons to provide a choice among competing applicants. See Crosthwait v. FCC, 584 F.2d 550,

² Hearing Designation Order ("HDO") DA 92-577 released May 20, 1992, p. 5

44 RR2d 107 (D.C. Cir 1978).

WHEREFORE, HBI requests leave to file its accompanying
Reply and its consideration herein.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Peter A. Casciato", is written over the typed name and address.

Peter A. Casciato
A Professional Corporation
1500 Sansome St. Suite 201
San Francisco, CA 94111
(415) 291-8661

July 28, 1992

Counsel to Healdsburg
Broadcasting, Inc.

CERTIFICATE OF SERVICE

I, Peter A. Casciato, certify that the following is true and correct:

I am employed in the City and County of San Francisco, California, am over the age of eighteen years, and am not a party to the within entitled action:

My business address is: 1500 Sansome St., Suite 201, San Francisco, California 94111.

On July 28, 1992, I caused the attached Petition For Leave To File Consolidated Reply of Healdsburg Broadcasting, Inc. to be served by causing true copies thereof, enclosed in sealed envelopes with postage thereon fully prepaid, to be placed in the United States Post Office mail box at San Francisco, California, addressed to the following listed people:

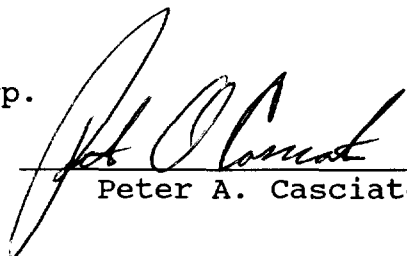
Hon. Edward J Kuhlmann
Administrative Law Judge
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Peter A. Casciato